

EXHIBIT 5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE JOHN F. WALTER, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)
PLAINTIFF,) CASE NO.
vs.) CR 20-326-JFW
JOSE LUIS HUIZAR, et al.,)
DEFENDANTS.) PAGES 1 TO 57

**REPORTER'S TRANSCRIPT OF
MOTION TO COMPEL
MONDAY, APRIL 25, 2022
9:02 A.M.
LOS ANGELES, CALIFORNIA**

MIRANDA ALGORRI, CSR 12743, RPR, CRR
FEDERAL OFFICIAL COURT REPORTER
350 WEST 1ST STREET, SUITE 4455
LOS ANGELES, CALIFORNIA 90012
MIRANDAALGORRI@GMAIL.COM

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

3
4 NICOLA T. HANNA
5 UNITED STATES ATTORNEY
6 BY: MACK JENKINS
7 BY: VERONICA DRAGALIN
8 BY: CASSIE PALMER
9 Assistant United States Attorneys
10 United States Courthouse
11 312 North Spring Street
12 Los Angeles, California 90012

13 FOR THE DEFENDANT HUIZAR:

14 HILARY L. POTASHNER
15 FEDERAL PUBLIC DEFENDER
16 BY: CAREL ALÉ
17 BY: CHARLES SNYDER
18 BY: ADAM OLIN
19 Deputy Federal Public Defenders
20 Central District of California
21 321 East Second Street
22 Los Angeles, California 90012

23 FOR DEFENDANT CHAN:

24 BRAUN & BRAUN, LLP
25 BY: HARLAND BRAUN
10880 Wilshire Boulevard
Suite 1020
Los Angeles, California 90024

26 FOR THE DEFENDANT SHEN ZHEN NEW WORLD I:

27 LAW OFFICES OF RICHARD M. STEINGARD
28 BY: RICHARD M. STEINGARD
29 800 Wilshire Boulevard
30 Suite 1050
31 Los Angeles, California 90017

1 APPEARANCES OF COUNSEL CONTINUED:

2
3 FOR THE DEFENDANTS LEE AND 940 HILL:

4 BIRD MARELLA BOXER WOLPERT NESSIM DROOKS LINCENBERG & RHOW
5 BY: ARIEL A. NEUMAN
6 1875 Century Park East
7 23rd Floor
8 Los Angeles, California 90067

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LOS ANGELES, CALIFORNIA; MONDAY, APRIL 25, 2022

9:02 A.M.

- - -

09:01AM 5 THE CLERK: Calling item 3, CR 20-326(A)-JFW,
6 United States of America versus Jose Luis Huizar, et al.

Counsel, please state your appearances.

MR. JENKINS: Good morning, Your Honor.

9 Mack Jenkins, Veronica Dragalin, Special Agent Andrew Civetti,
09:02AM 10 and Cassie Palmer on behalf of the United States.

11 MS. ALÉ: Good morning, Your Honor. Carol Alé,
12 Adam Olin, Charles Snyder from the Office of the Federal Public
13 Defender's Office on behalf of Mr. Huizar who is present at
14 counsel table.

09:02AM 15 MR. BRAUN: Good morning, Your Honor.

16 Harland Braun, B-r-a-u-n. I'm alone with Mr. Ray Chan who is
17 present.

18 MR. NEUMAN: Good morning, Your Honor.

19 Ariel Neuman for Dae Yong Lee whose waiver is on file and
09:02AM 20 940 Hill, LLC.

21 MR. STEINGARD: Good morning, Your Honor.

22 | Richard Steingard for Shen Zhen New World I, LLC.

23 THE COURT: Good morning to all. We have on
24 calendar this morning the defendant's Motion to Compel
09:03AM 25 production of cooperator devices and accounts, communication

1 between the Government and cooperators and/or their counsel.
2 That motion was filed on March 3rd of 2022, and it appears as
3 docket No. 381. The Government filed its opposition which
4 appears as docket No. 418. And the defendants filed a reply
09:03AM 5 which appears as docket No. 430. The parties also filed
6 pursuant to my request a joint statement regarding the
7 defendant's Motion to Compel. That was filed on April 18th and
8 appears as docket No. 431.

9 In the motion, the defendants move for an order
09:03AM 10 to compel the Government to disclose exact duplicate forensic
11 copies of the imaged devices and e-mail cloud storage and any
12 accounts in the Government's possession belonging to the nine
13 individuals that are identified or named in the motion. I will
14 refer to that portion of the motion as the motion directed to
09:04AM 15 the witness and cooperator devices.

16 The second category, the defendant moves to
17 compel production of all communications and evidence of
18 communications including scheduling notices, nonprivileged
19 notes, or other documentation of communications between the
09:04AM 20 Government and -- in this section there are 14 named
21 individuals, and I will refer to this portion of the motion as
22 the witness and cooperator communications.

23 The defendants argue that the information they
24 seek is subject to disclosure under Rule 16 and
09:05AM 25 *Brady versus Maryland*. They claim that the requested materials

09:05AM

1 are in the possession, custody, and control of the Government
2 and material to their defense. The Government argues that the
3 witness and cooperator devices are not within its possession,
4 custody, or control for purposes of Rule 16. The defendants
5 have not met their burden of demonstrating the materiality.

09:05AM

6 With respect to the witness and cooperator
7 communications, the Government argues that the defendants have
8 failed to establish materiality, and that the Government has
9 already provided discoverable materials and will continue to do
10 so consistent with their obligations under *Brady* and *Giglio*.

09:06AM

11 The legal standard applicable to this motion is
12 undisputed. Although there is no general constitutional right
13 to discovery in a criminal case, there are three sources
14 establishing the Government's disclosure obligations.

09:06AM

15 Federal Rule of Criminal Procedure 16 establishes
16 guidelines for pretrial production of certain limited materials
17 including items material to preparing a defense. In addition,
18 under *Brady* and *Giglio*, the Government must disclose to the
19 defense evidence in its possession that is exculpatory or
20 favorable to the defense or that may be used for impeachment
21 purposes. Such evidence includes material that bears on the
22 credibility of a significant witness in the case.

09:06AM

23 In addition, under Section 3500, the *Jencks* act
24 statements made by a Government witness that relate to the
25 subject matter of the witness's testimony are required to be

1 disclosed after the witness has testified.

2 I will hear argument from counsel. The items
3 that -- I don't think I need any argument. I think the papers
4 adequately cover the witness and cooperator devices. But I
09:07AM 5 will hear from the defense with respect to the other category
6 of items which are the cooperator communications with respect
7 to the 14 identified individuals in the motion.

8 Who's going to argue the motion on behalf of the
9 defense?

09:07AM 10 MS. ALÉ: I am, Your Honor.

11 THE COURT: All right. I can tell you that I had
12 a very difficult time following the motion, and specifically on
13 page 14 where you argue the existing discovery illustrates how
14 cooperator and witnesses' testimony changed throughout the
09:08AM 15 investigation. And you go on to explain or use citing to two
16 examples, one with respect to the interviews of Morrie Goldman
17 and, two, the interviews with respect to Businessperson A. Is
18 Businessperson A -- I can never remember whether we're still
19 operating under these acronyms or --

20 MS. DRAGALIN: For now, yes, Your Honor, we would
21 still like to use Businessperson A.

22 THE COURT: What are the initials of
23 Businessperson A?

24 MS. DRAGALIN: A.W.

09:08AM 25 THE COURT: That's what I thought.

09:09AM

1 All right. The difficulty I have is there -- you
2 cite to the Goldman 302. There's apparently -- in support of
3 your argument I represent -- I understand this is just one
4 example to support your argument, but it's probably the most
5 important one. You don't attach the December 5th, 2018, 302
6 which is, as I understand it, the first proffer by Mr. Goldman
7 to the Government. You do cite to 365, Exhibit 1, which is the
8 ex parte application for the Rule 17 subpoenas.

09:10AM

9 In any event, I was able to find the 302. It was
10 actually attached but not attached to the motion. But what I
11 was not able to find is the comparison and the quotes or the
12 characterization of the second proffer which took place in
13 January -- it looks like it's January 16th of 2019.

09:10AM

14 The then 302 was not only not attached to the
15 motion, but I could not find anywhere where the January 16th
16 302 -- if it is part of this record. In addition, you didn't
17 attach a copy of the transcript of the partial recording that
18 was made by Mr. Goldman's attorney during the course of the
19 first proffer on December 15th, 2018. I was able to locate
20 that which was not at 341, Exhibit 1, but was the -- attached
21 to the reply in support of the motion to suppress
22 attorney/client which was filed in January which looks like
23 it's docket No. 349.

09:11AM

24 In addition, you argue that the various proffers
25 show how the -- your argument is how the witness's testimony

1 was apparently shaped, but you refer to the plea agreement that
2 was entered into by Mr. Goldman. But again, the plea agreement
3 is not attached to the motion.

4 So I had a difficult time trying to figure out
09:12AM 5 what -- because I wanted to obviously check the accuracy of
6 your representations made in paragraph 14. And I did check
7 them, and I found that some of them, at least in my view, are
8 not accurate and certainly overstated that, for example, you
9 indicate that, when the Government interviewed Mr. Goldman on
09:12AM 10 December 5th of 2018, Goldman was unequivocal that there was no
11 quid pro quo. He consistently rejected any suggestion that
12 Huizar engaged in bribery including with Company M. I have
13 read that 302, and I understand your argument, but I don't
14 think it is entirely accurate.

09:13AM 15 So I will hear from you. And I can also tell you
16 that, in my search for these various documents, I had occasion
17 to review Mr. Snyder's declaration which was filed on
18 February 2nd of 2022 and appears as docket No. 65. And this
19 was in support of the ex parte application for an order issuing
09:13AM 20 early return of subpoena duces tecum. And my memory serves me
21 this was the efforts to obtain the recording that Mr. Meister,
22 who was representing Mr. Goldman during the course of the
23 initial proffer, had made. Or at least it's a partial
24 recording. I guess I can't find that we ever ruled on this
09:14AM 25 ex parte application. I assume that that issue was resolved

1 and everybody now has a copy of the audio recording?

2 MR. SNYDER: No.

3 THE COURT: Pardon me?

4 MR. SNYDER: No. It wasn't resolved.

09:14AM 5 THE COURT: It wasn't resolved?

6 MR. SNYDER: No.

7 THE COURT: You still don't have a copy of it?

8 MR. SNYDER: No.

9 THE COURT: You have a transcript.

09:14AM 10 MR. SNYDER: We have a transcript of the second
11 half of the interview that the Government recorded. We don't
12 have a transcript of the part that -- the missing audio.

13 THE COURT: Okay. And Mr. Meister, he has
14 possession of it?

09:15AM 15 MR. SNYDER: Yes.

16 THE COURT: Is he refusing to give it to you?

17 MR. SNYDER: So here -- the issue that occurred
18 was --

09:15AM 19 THE COURT: You're going to have to get to the
20 mic. Why don't you remain seated and just pull the microphone
21 to you. I have a hard time with the sound system in this
22 courtroom understanding you.

23 MR. SNYDER: So the issue that occurred was
24 there's a full recording which, according to the Government,
09:15AM 25 Mr. Meister believes has privileged portions on it. And we

1 asked the Government for that recording, and ultimately there
2 was a breakdown because the Government said that it was going
3 to redact the privileged portions of the recording that
4 Mr. Meister had turned over to it.

09:15AM 5 And our position was, well, since he turned it
6 over to you and he said, why don't you guys redact these
7 privileged portions, and since they're not actually part of the
8 same team, he had waived privilege as to those. So we wanted
9 the full recording. And it's our understanding that he's not
09:16AM 10 willing to turn over the full recording. So that's why we
11 applied for a subpoena to the Court.

12 THE COURT: And so what is Exhibit 1 that's
13 attached to docket No. 349?

14 MR. SNYDER: If that's the transcript -- so what
09:16AM 15 happened was they started the proffer, and the proffer wasn't
16 being recorded. At some point during the proffer --

17 THE COURT: At least the Government didn't think
18 it was being recorded.

19 MR. SNYDER: Right. Right. It wasn't being
09:16AM 20 openly recorded. Obviously I wasn't there, so, you know,
21 either Mr. Jenkins or Ms. Dragalin or Mr. Civetti would be the
22 people to tell you what actually happened. My understanding is
23 at some point they realized that the lawyer is recording the
24 proffer and they say, are you recording? And so they stop.
09:16AM 25 And he stops his recording, and he agrees to preserve it and

1 turn it over to the Government, and then the Government starts
2 recording at that point in time. So the transcript that we
3 have is from the second half.

4 THE COURT: All right. And the -- all right. So
09:17AM 5 what's the -- so what's the status of the -- if the Government
6 takes the position that the portions that Meister claims are
7 attorney/client privilege shouldn't be disclosed, I assume
8 there's no problem with editing or preparing a transcript and
9 providing the defense with the balance of the transcript.

09:17AM 10 MS. DRAGALIN: Your Honor, just for the record,
11 the Government does not have a copy of that recording from
12 Mr. Meister. He was going to give it to us, but around that
13 same time the defense notified us that they took the position
14 that, if Mr. Meister provided a copy of that recording, he
09:17AM 15 would be waiving privilege. So, therefore, Mr. Meister is
16 still asserting privilege and has not provided a copy of that
17 first half of the recording to the Government. So the
18 Government does not have it in its possession. Only
19 Mr. Meister does.

09:18AM 20 MR. SNYDER: Right. And it's laid out in the
21 declaration. It looked like we were going to have an agreement
22 at the time when we made our position --

23 THE COURT: I don't want to digress on this
24 issue. I assume at some point in time we will have to deal
09:18AM 25 with that issue. I was just under the, I guess, mistaken

1 assumption that the transcript that was attached was the
2 transcript.

09:18AM

3 In any event, I did begin or noted that I had
4 reviewed in the course of my search for these various 302s and
5 the transcript Mr. Snyder's declaration. In reading -- well,
6 first of all, let me ask. Is the January 302 somewhere in this
7 record?

09:19AM

8 MS. ALÉ: Your Honor, I believed that it was, and
9 I apologize that I did not attach the 302s or transcripts to
10 the motion. It was an attempt to cut down on the paper, but I
11 see now that it created more work for the Court. So I
12 apologize.

09:19AM

13 THE COURT: Well, I can't find it anywhere. It
14 just doesn't exist in the -- there's no -- there's no citation
15 to the January 6, 2019, 302. I just don't see it.

16 MS. ALÉ: I apologize if that's the case,
17 Your Honor. I can submit it --

18 THE COURT: Is it the case?

09:19AM

19 MS. ALÉ: I don't know. I believed that it was
20 part of the record, but if the Court was not able to find it, I
21 will submit an exhibit this morning once the hearing is
22 concluded.

09:20AM

23 THE COURT: All right. I didn't look at every
24 document. I was trying to find these, and I was using the
25 citations. And why you're referring me to documents -- other

1 documents such as 365 and 341 to go find these exhibits, you
2 know, I spend enough time in this case. I don't have time to
3 go looking for documents.

09:20AM 4 You have a copy of the Goldman plea agreement, do
5 you not?

6 MS. ALÉ: Yes, Your Honor.

7 THE COURT: All right. That was not attached
8 either.

9 MS. ALÉ: Correct.

09:20AM 10 THE COURT: All right. So it seems to me, based
11 upon Mr. Snyder's declaration that I just referred to that was
12 filed in February of 2022, I don't agree necessarily with
13 Mr. Snyder's characterization of some of the items he includes
14 in his declaration although, with respect to the second
09:21AM 15 proffer, I have no way of disputing or questioning the
16 statements in the declaration because I have nothing to compare
17 them with.

18 But it seems to me, based upon this declaration
19 back in February -- I guess that's not too long ago -- February
09:21AM 20 of 2022, that the Government with respect to the example that
21 you're using to support the production of this cooperator --
22 cooperator's statements, schedules, whatever else is in the
23 category, has fully complied with its discovery obligations as
24 to Company M, Mr. Goldman, and Executive M.

09:22AM 25 Are we still using the initials and the letters

1 for those two?

2 MS. DRAGALIN: No, Your Honor. We can use their
3 true identities which is Carmel Partners and Neils, N-e-i-l-s,
4 Cotter.

09:22AM 5 THE COURT: C-o-t-t-e-r.

6 So in the -- in Mr. Snyder's declaration, he
7 begins the declaration by saying the alleged bribe involving
8 Company M, which is Carmel Partners, is supported by the
9 testimony of a single cooperator Morrie Goldman who reversed
09:22AM 10 his factual account in exchange for leniency. Everyone else
11 supposedly involved in the bribe denies that it occurred, and
12 no documents memorialize a quid pro quo.

13 It goes on to say that obviously the supposed
14 bribe by Mr. Huizar categorically denies it. The supposed
09:23AM 15 briber, Executive M or Mr. Cotter, categorically denied it in
16 multiple meetings with the Government and in surreptitious
17 recorded stings.

18 I assume that you have the -- all of the 302s of
19 Mr. Cotter's interviews with the Government and you also have
09:23AM 20 recordings of -- made by apparently Mr. Cotter in what
21 Mr. Snyder characterized as recorded stings? You have all
22 those?

23 MS. ALÉ: Yes, Your Honor. We do have those.

24 THE COURT: Who are the recordings with?

09:23AM 25 MS. ALÉ: I believe they are with Mr. Goldman.

1 He was the one who was doing -- making the calls.

2 THE COURT: All right. And then it goes on to
3 state every other Company M executive or employee involved in
4 project M, which is the -- which is Mateo Project; correct?

09:24AM 5 MS. DRAGALIN: Yes, Your Honor.

6 THE COURT: Categorically deny knowledge of a
7 bribe. So I assume there are documents or 302s or some other
8 form of evidence as to every other Company M executive denying
9 the knowledge of a bribe? You have all that information?

09:24AM 10 MS. ALÉ: We have that information, Your Honor.

11 THE COURT: Okay. And then Company M signed a
12 non-prosecution agreement with no admission of criminal
13 liability. I take it that you have a copy of the
14 non-prosecution agreement?

09:24AM 15 MS. ALÉ: Yes. We do have that, Your Honor.

16 But --

17 THE COURT: Okay.

18 MS. ALÉ: It's everything in between that we
19 don't have.

09:24AM 20 THE COURT: It's what?

21 MS. ALÉ: It's everything in between from where
22 they started with the denials to when they finally entered a
23 non-prosecution agreement. We don't have the communications
24 that led to that. All of a sudden in September 2020, I
25 believe, four Company M or Mateo Project executives or

09:25AM

1 Carmel Partners executives sat down for interviews with the
2 Government. What prompted those interviews after all four
3 executives denied any liability, after they refused to speak
4 with the Government we don't know. And that's part of what
5 we're asking for. We need to tell the story of how --

09:25AM

6 THE COURT: Wait a minute. I'm confused. So the
7 Executive M -- you have all the interviews for -- Mr. Cotter
8 denies in multiple meetings. You have all the 302s with the
9 multiple meetings with the Government, and you have the phone
10 conversations of the transcripts of the recordings with
11 Mr. Goldman. You have all that. In that he apparently,
12 according to the Snyder declarations, categorically denies
13 there was a bribe; right?

14 MS. ALÉ: That's correct, Your Honor.

09:26AM

15 THE COURT: Does he change his position now?

16 MS. ALÉ: He doesn't change his position as to
17 the bribe, but he does enter a non-prosecution agreement.
18 Excuse me, Your Honor.

09:26AM

19 THE COURT: So what happened -- I mean, so what's
20 the point if -- if you have all this information with respect
21 to executive -- Mr. Cotter who denies that there were bribes
22 and they entered into a non-prosecution agreement, what more do
23 you need?

24 MS. ALÉ: I'm sorry, Your Honor?

09:26AM

25 THE COURT: I'm curious to know what Mr. Cotter

09:27AM

1 believed he was paying \$100,000 for to the various
2 contributions that he made to PAC A and PAC B and the result
3 that the Mateo Project was not only approved at the
4 PLUM Committee but also it was approved in accordance with the
5 Carmel Partners's request that the 11 percent low income
6 housing provision be reduced, and ultimately it was approved I
7 think at 4 percent. In any event, that's neither here nor
8 there.

09:27AM

9 I just don't understand what it is you're missing
10 in between these interviews where he denies it was a bribe and
11 the non-prosecution agreement. Why do you need that
12 information? I mean, you already have a record that he
13 apparently is going to get on the witness stand and he's going
14 to testify that the hundred -- whatever it was. Was it a
15 hundred thousand dollars that was paid?

09:28AM

16 MS. ALÉ: I believe so, yes, Your Honor.

09:28AM

17 THE COURT: He is going to testify that, given
18 the various payments he made -- I think they were 25,000,
19 25,000, and then there was an additional I think in connection
20 with the -- at least the allegations in the First Superseding
21 Indictment when apparently, as Mr. Lee ran into labor union
22 problems, that the Mateo Project ran into labor union problems,
23 and there was an additional request or ask for an additional I
24 believe it was \$50,000 in connection with resolving that
25 particular labor issue with respect to the Mateo Project.

1 So what is it that you think? That the
2 Government is going to have some surprise with respect to
3 Mr. Cotter's testimony at trial?

09:29AM 4 MR. SNYDER: Your Honor, do you mind if I say
5 something about this? I know Ms. Alé is arguing, but I'm
6 pretty familiar with Mateo.

7 So if I can answer your question, so kind of the
8 history of what happened here, at least as I understand it --
9 and we're trying to piece this together as best as possible --
09:29AM 10 is that, you know, this investigation --

11 THE COURT: First of all, it's pretty easy to
12 piece together based upon the allegations of the First
13 Superseding Indictment.

14 MR. SNYDER: Right. So that's --

09:29AM 15 THE COURT: And the First Superseding Indictment,
16 those overt acts in connection with the Mateo Project which
17 begin at 241 are pretty consistent also with the -- as I went
18 back and tried to match some of the items in these various
19 overt acts are consistent with the factual basis for the plea
09:30AM 20 that Mr. Goldman entered into.

21 MR. SNYDER: If you will just give me a second, I
22 will explain very briefly kind of what's happening.

23 So the First Superseding Indictment and the pleas
24 are the end result of a long process. As we understand it,
09:30AM 25 what happened here is that this investigation starts and the

09:30AM

1 Government starts reaching out to all of the potential
2 witnesses in this case. I believe -- we don't have
3 communications for everyone, but I believe that the position
4 that each of the Carmel executives took at the outset is, if
5 you bring us into the grand jury or if you bring us to your
6 office, we will refuse to testify under an invocation.

09:31AM

7 At some point between let's say the beginning of
8 2020 and September, there were communications between the
9 Government and the lawyers for each of the executives at
10 Carmel. These people are represented by extremely talented
11 lawyers, you know, people who are some of the most reputable
12 lawyers in the country or the state. They're not going to walk
13 their clients into a meeting without knowing what's happening.

09:31AM

14 At some point between, you know, early January of
15 2020 and September when they all show up to meet, there is some
16 sort of understanding. The way that cooperation works in a
17 case like this is that --

09:31AM

18 THE COURT: You don't have to tell me how
19 cooperation works because I read your papers, and what you left
20 out of how cooperation works is that, when somebody is asked to
21 or consideration -- considering cooperating with the
22 Government, the flip side of what you argue is that that
23 cooperator would typically go to an initial meeting with the
24 prosecutors and his counsel to get an understanding of what the
25 nature and extent of what the Government is investigating. And

09:32AM

1 then that cooperator, who may not have all the information
2 available to be able to proffer to the Government on that
3 particular initial meeting goes back, reviews records and text
4 messages and any other items that may assist to refresh the
5 memory of the witness, because these events take place several
6 years ago, and then goes back to a second session with the
7 Government and is able to more intelligently make a pitch to
8 the Government that this particular witness does have
9 information that may be of some value to the Government.

09:32AM

10 MR. SNYDER: So I don't think that's how it
11 worked in this case.

09:32AM

12 THE COURT: I'm not -- you're talking -- you were
13 talking about in general you were going to educate me in terms
14 of how cooperation with the Government works. I don't need
15 that education because I've been on both sides and I fully
16 understand the process.

09:33AM

17 MR. SNYDER: Understood. I think -- I think the
18 point is about how it's worked in this case which is the
19 lawyers for the cooperators and the key witnesses have been
20 conduits for information before and after the proffer. So,
21 yes, we have 302s from the proffers but the 302s, like the plea
22 agreements, like the First Superseding Indictments are the end
23 result of a process where, before someone comes in to sit with
24 the Government, it's not -- it's not like, you know, they don't
25 have a theory coming in. Before someone comes in to sit with

1 the Government, there are communications with their lawyers.
2 Those communications exist. I don't think there's any dispute
3 they exist. There were phone calls.

4 THE COURT: Communications with their lawyers,
09:33AM 5 obviously they exist.

6 MR. SNYDER: Right.

7 THE COURT: Lawyers communicate with their
8 clients because lawyers need to understand what the facts are
9 that the client has so that client can or cannot be considered
09:34AM 10 as having information that the Government needs or doesn't
11 need.

12 MR. SNYDER: I mean, communications between the
13 lawyers and the Government. So in advance of these meetings
14 and then after the meetings. We have all -- each of us I think
09:34AM 15 in this case have had this experience where someone goes in and
16 they sit down and then there's feedback provided about, well,
17 we think this was right. We don't think that was right. There
18 may be a number of calls or e-mails or communications. That
19 all goes into what then is said next.

20 I will turn it back over to Ms. Alé. But I think
21 when it comes to the Carmel Project and those executives in
22 particular, I think that the history is very clear that they
23 all initially invoked. At some point after that invocation, no
24 doubt as a result of communications between the lawyers, they
09:34AM 25 all come in in the fall of 2020, and they all sit for an

1 interview, and shortly thereafter there is a non-prosecution
2 agreed to, and none of those people are charged.

3 That didn't just happen kind of with those being
4 the only data points. What must have happened in between there
09:35AM 5 is that the lawyers were going back and forth both before and
6 after those proffers. There were negotiations about the
7 non-prosecution agreement. No doubt there was some
8 conversation about who was going to be charged and who wasn't
9 going to be charged if they came in and if they talked and what
09:35AM 10 the Government's view of the case was. And we don't have any
11 of that. Yes, we have the 302s from the proffers. We have the
12 First Superseding Indictment. We have the plea agreement that
13 the Government drafted for Morrie Goldman. But that's like
14 giving us the end result without showing us how the process
09:35AM 15 happened.

16 What they want to do is they want to put on the
17 end result of this cooperation without letting us get into and
18 show the jury, well, how did that product come about?

19 THE COURT: The end result of the process was a
09:35AM 20 non-prosecution agreement.

21 MR. SNYDER: Right. And the question is --

22 THE COURT: So.

23 MR. SNYDER: So why -- I mean, I think the
24 question is, well, if the Government's theory of this case is
09:36AM 25 Neils Cotter bribed a sitting city councilman, right, and

09:36AM

1 people in this multi-billion dollar private equity firm either
2 knew about or there would be imputed knowledge to the firm, why
3 were none of those people charged? I think that's a legitimate
4 question to ask. And I think the Court was even just alluding
5 to that.

09:36AM

6 Well, the reason they're not charged is either
7 there's something else going on behind the scenes or there's a
8 question about the facts or there's a question about the
9 information. All we have is the end result which the
10 Government wants to present. And what we're asking to do,
11 which we're entitled to do, is to get at what's going on behind
12 the scenes and to see how that end result was created.

09:37AM

13 THE COURT: But see, now you're being more
14 factually specific, but none of that is in the motion, and
15 that's the problem I have with the motion. I'm supposed to be
16 piecing together bits and pieces from missing documents because
17 you have to make a showing. And there hasn't been any showing.
18 The first time I've heard about these series of executives that
19 have been parading into the U.S. Attorney's Office all
20 represented by superior counsel and whatever you suspect they
21 were doing or not doing, that's not in front of me. And that's
22 the problem I have with the motion.

09:37AM

23 You continually ask me to rule on things on an
24 inadequate record, and I'm not going to do that. Your
25 declaration enlightens me in terms of -- I take it Executive M

09:38AM

1 is going to continue -- Mr. Cotter is going to continually deny
2 that the hundred thousand dollars that apparently he was the
3 head of this Mateo Project was contributing to the various PACs
4 had nothing to do with the bribe. I guess it was just a normal
5 way that Carmel Partners did business.

09:38AM

6 MR. SNYDER: Well, I think the reality of what's
7 going to happen is that, when we want to call Neils Cotter to
8 testify at trial to say exactly that, his lawyer, who is well
9 qualified, is going to say, if you call Mr. Cotter, he's going
10 to invoke.

09:38AM

11 So what ends up happening is through this process
12 the Government immunized some people. It leaves some people
13 out there in the wind like Mr. Cotter who, if called to
14 testify, would say that he didn't bribe. He wasn't involved in
15 a quid pro quo. And so -- so I think what we're getting at --
16 and this is, just as we've been talking about, this is just one
17 example, but it's one example of an overall process which has
18 gone into shaping the end result which is the First Superseding
19 Indictment that the Court has seen which is the 302s that we
20 have. And what we're trying to get at is, well, what was
21 behind that product, the end product? And we're entitled to
22 that.

09:39AM

23 THE COURT: Well, I don't think you are based
24 upon the showing. In any event, so why can't you put into
25 evidence the non-prosecution agreement?

1 MS. ALÉ: Your Honor, and that was -- again, I
2 drafted the motion, and I apologize about that.

3 Again, my attempt at directing the Court's
4 attention to where the non-prosecution agreements were found
09:39AM 5 was clearly an error but an attempt to limit the number of
6 exhibits and things that would be clouding the record. So if
7 the Court would like, I can refile the motion with the
8 necessary exhibits for the Court's review.

9 THE COURT: Well, in my view, you haven't made a
09:39AM 10 sufficient showing. I mean, you use -- you call to my
11 attention an example which is the Goldman/Mateo Project and
12 Mr. Cotter and Carmel Partners, and I spent a good couple days
13 trying to understand the transaction and relationship to the
14 First Superseding Indictment as well as Mr. Goldman's factual
09:40AM 15 basis for the plea.

16 And uncovering or discovering Mr. Snyder's
17 declaration, I conclude and I continue to conclude that the
18 Government has, up to this point in time, given the information
19 that's included in this declaration, has complied with its
09:40AM 20 discovery obligations. If there's more out there -- apparently
21 there is more out there that hasn't been presented to the
22 Court, I'm here to rule. But I'm not going to continue to
23 review these motions and make rulings on an inadequate record.

24 All right. So does anybody have anything else
09:41AM 25 they want to say because I'm going to rule?

1 MR. NEUMAN: Can I say something, Your Honor?

2 THE COURT: Sure.

3 MR. NEUMAN: This is -- we joined the motion for
4 a variety of reasons. But it really sort of came to light in
09:41AM 5 the last week why we need these communications between counsel
6 and the Government.

7 We on Friday got a 302 of a March 2019 meeting
8 between Justin Kim, his attorney, and the Government. And this
9 302 was drafted ten days ago. We had no record that this
09:41AM 10 meeting occurred prior to receiving this 302. We would have
11 known about it, presumably, if we had communications between
12 counsel and the Government. I have my theories of why we got
13 it now. I think it has to do with the motions in limine that
14 are pending. But strangely, here we are, you know, a month
09:42AM 15 before trial getting a 302 that is documenting a purported
16 meeting over three years ago for which there is no agent notes
17 we're being told.

18 And it really demonstrates why we need to see
19 that back-and-forth between counsel and -- defense counsel and
09:42AM 20 the Government counsel. We need to understand what other
21 meetings potentially are out there, what other discussions are
22 out there. How did Mr. Kim in this case -- this is
23 Justin Kim's, I think, his first, quote/unquote, cooperation
24 meeting with the Government. You know, where did this come
09:42AM 25 from? And are there other meetings that we don't know about

1 that the Government may have forgotten to write a 302 about at
2 the time?

3 THE COURT: Well, I assume that the Government
4 has until, what is it, April -- what's today? -- April 29th
09:43AM 5 under the current schedule to provide all the *Brady/Giglio*
6 material under the Lee scheduling order as well as the
7 *Jencks Act* material on April 29th.

8 Again, to the extent the Government wants to run
9 the risk of not disclosing what they're obligated to disclose,
09:43AM 10 they may end up in the same place that the Government ended up
11 in the Avenatti case, and that is a dismissal.

12 MR. NEUMAN: That may be, Your Honor, and I
13 appreciate the comment. I think the concern here, as I read
14 this 302, I don't think the Government would view this as
09:43AM 15 *Brady*. I think the Government would say this is potentially
16 inculpatory of our client.

17 But my concern is what else is out there that is
18 relevant to my case? I need to know when Mr. Kim was meeting
19 with the Government, what his lawyer was negotiating with the
09:43AM 20 Government. As the Court knows, he's the central witness
21 against my client, and this sort of three years later
22 production gives me real concern.

23 THE COURT: All right. Mr. Jenkins, what about
24 the more pressing and that is Mr. Neuman, who we're set for a
09:44AM 25 June trial, and Government's obligations -- I don't have all

1 the dates in front of me, but they seem to be coming up fairly
2 soon.

09:44AM

3 MR. JENKINS: Yes, Your Honor. And Mr. Neuman's
4 statement is exactly a product of that. We continue to prepare
5 for, analyze what discovery has been produced, what discovery
6 has not been produced, what's been redacted, what needs to be
7 unredacted. As the Court just noted, the production he just
8 explained was produced in advance of the Court's deadline. I
9 believe all other deadlines have been met with and will
10 continue to be met with by the deadline or, if not, in advance.

11 THE COURT: What about this current 302 that was
12 just recently produced? What's the history behind that?

09:44AM

13 MR. JENKINS: So as we prepare for that
14 production of -- what the Government is currently doing is
15 looking for basically everything Justin Kim related. As the
16 Court may recall, one of the directives from a prior motion to
17 compel related to Justin Kim --

18 THE COURT: You're going to have to get closer to
19 the microphone. Your voice is trailing.

09:45AM

20 MR. JENKINS: So one of the last relevant court
21 directives was related to a prior motion to compel related to
22 Justin Kim because Justin Kim had provided information related
23 to Defendant Huizar, Defendant Lee, and others. And so there
24 are redactions. So one of the things the Government has went
25 back and done and reviewed and unredacted a lot of information

1 consistent with the Court's order and in that same process
2 reviewing Justin Kim references in other case files.

3 And one of the things that AUSA Dragalin noticed
4 was that there was a calendar entry or a meeting that existed
09:45AM 5 for which there was not a report, and so she identified that
6 through that diligent process and got a report drafted to
7 document exactly what Mr. Neuman just pointed out, something
8 that is what, we would say, is significantly inculpatory.

9 The existence of the meeting was documented and
09:46AM 10 provided to them in advance of the deadline of the trial. We
11 will continue to, of course -- I think Mr. Neuman is correct
12 that that highlights the need to go through the exact process
13 we are doing collectively. I think Ms. Dragalin's
14 identification of that meeting is corroborative of those
09:46AM 15 efforts, Your Honor.

16 THE COURT: When was the meeting and who
17 participated in the meeting?

18 MR. JENKINS: The meeting was March 18th --
19 March 2019.

09:46AM 20 MR. NEUMAN: March 19, 2019, according to the
21 302. Present were Mr. Kim, his attorney David Vaughn, and
22 Ms. Dragalin and Mr. Jenkins according to the 302.

23 MR. JENKINS: And, in addition, the agent who
24 authored the report Tony Logan, but otherwise that is correct.

09:46AM 25 Thank you, Mr. Neuman.

1 THE COURT: What was the sum and substance of
2 that meeting?

3 MR. JENKINS: At this point I will similarly hand
4 off the baton, with the Court's indulgence, to AUSA Dragalin
09:47AM 5 who located this document. Or meeting --

6 THE COURT: It wasn't a document. It was some
7 reference to a meeting somewhere and a document was prepared to
8 memorialize the meeting?

9 MR. JENKINS: That is correct, Your Honor.

09:47AM 10 THE COURT: Okay.

11 MS. DRAGALIN: Yes, Your Honor. On March 20th --

12 THE COURT: You can remain seated.

13 MS. DRAGALIN: On March 20th Justin Kim met with
14 David Lee and recorded his meeting with David Lee. Transcripts
09:47AM 15 of that recorded meeting have been produced. As we were
16 preparing for trial, I recalled that, obviously to be able to
17 record that meeting, Justin Kim must have been given a
18 recording device, and it reminded me that we met with Mr. Kim
19 before that recorded meeting to instruct him how to use the
09:47AM 20 device and to give him instructions about the recorded meeting
21 that he was to have the very next day.

22 And so the meeting we had with Mr. Kim and his
23 counsel was very limited to just the recording device and
24 instructions on what to say during that recorded meeting the
09:48AM 25 next day. And so the report that was drafted reflected the

1 information we learned from Mr. Kim during that short meeting,
2 and it was before he sat down to actually proffer all of the
3 information he subsequently told us about later.

4 MR. NEUMAN: And so, Your Honor, that summary by
09:48AM 5 Ms. Dragalin only highlights the point that I'm making because
6 none of what she just said is in that 302. And so there is a
7 problem between what was going on at the time this calendar
8 entry that exists. The 302 doesn't say anything about giving
9 him a recording device, instructing him on the recording
09:48AM 10 device. None of that is in here.

11 It relates a conversation or a statement by
12 Mr. Kim about conversations he supposedly had with my client.
13 This is old. And I'm not complaining that it was produced now.
14 They're within -- I'm not saying it's late production. What
09:48AM 15 I'm saying is they didn't know about it until she happened to
16 see a calendar entry. We didn't know. We have been wondering
17 how did this recording come to be, the March 20th recording.
18 And now my concern is what else is out there that they might
19 miss, not necessarily exculpatory in that sense but certainly
09:49AM 20 relevant to the defense and how Justin Kim came to make the
21 statements he makes about my client.

22 THE COURT: Well, I'm sure that they're going to
23 continue their efforts in connection with their preparation for
24 trial.

09:49AM 25 All right. Anybody want to add anything else

1 before I rule? Anything for the Government?

2 MS. DRAGALIN: No, Your Honor.

3 THE COURT: Defense?

4 MS. ALÉ: Nothing else.

09:49AM 5 THE COURT: The Government makes the -- I'm
6 sorry. The Court makes the following ruling:

7 With respect to the witness and cooperator
8 devices, the defendants, as I indicated, seek imaged copies of
9 the digital devices for the nine cooperating defendants and
09:50AM 10 witnesses identified in their motion. Specifically, the
11 devices at issue include forensic copies of imaged devices and
12 accounts for seven of these individuals that were searched
13 pursuant to search warrants. Esparza also consented to the
14 search and imaging of three additional devices provided the
09:50AM 15 search was consistent with the scope of the original omnibus
16 search warrant that was issued in November of 2018.

17 Businessperson A's phone was searched and imaged
18 pursuant to a limited consent. Moreover, the Government never
19 executed a search warrant or obtained consent to search and has
09:50AM 20 not searched the devices belonging to Mr. Morrie Goldman. It,
21 therefore, does not have any forensic imaging of his devices or
22 accounts in his possession.

23 The Government contends the defendants fail to
24 establish that it has possession of the devices or that any
09:51AM 25 information contained therein would be material to their

1 defense.

2 As to possession, according to the 9th Circuit in
3 the *United States versus Bryan*, B-r-y-a-n, at 868 F.2d 1032, a
4 document is in the possession, custody, or control of the
09:51AM 5 Government if the prosecutor has knowledge of and access to the
6 documents sought by the defendant.

7 The Government originally obtained search
8 warrants for most of the digital devices and accounts at issue
9 in this motion. The Government imaged and searched these items
09:51AM 10 for material that fell within the scope of the warrant and
11 later produced all of that data to the defendants. The
12 Government utilized the same process with respect to the
13 devices imaged and searched pursuant to the consents.

14 The Government claims it no longer has legal
09:51AM 15 authority to further access and search any of these devices
16 because the warrants have expired and none of the individuals
17 have consented to any further searches or disclosure, and in
18 fact, counsel for those defendants or individuals have
19 submitted written objections which are attached to the
09:52AM 20 Government's opposition.

21 The Court rejects the defendants' contention that
22 the Government continues to have authority to either search the
23 devices again for discoverable material or simply turn them
24 over to the defendants. The Court finds the district
09:52AM 25 court's -- district court case *United States versus Collins* at

09:52AM

1 409 F.Supp. 3d is instructive. In *Collins* defendants asked the
2 Court to -- asked the Court to order the Government to search
3 an uncharged co-conspirator's nonresponsive iCloud data that
4 has been searched pursuant to a search warrant for *Brady* and
5 Rule 16 material. The district court denied the motion because
6 the Government does not have the legal authority to go back and
7 search materials that are outside the scope of the search
8 warrant and thus did not have possession.

09:53AM

9 The Court noted that, as we have in this case,
10 the third party has a privacy interest in the data, the
11 Government obtained that data through the use of a search
12 warrant, and as a result of the Government's possession of and
13 ability to review that data was necessarily circumscribed by
14 the 4th Amendment.

09:53AM

15 Defendants attempted to distinguish *Collins* by
16 arguing that in that case, unlike here, the Government had
17 initially searched the data for potential *Brady* Rule 16
18 material. The *Collins* court however specifically stated that
19 it found the defendant's argument legally flawed even if it
20 assumed that the Government's initial search pursuant to the
21 warrant was insufficient under *Brady* and Rule 16.

09:53AM

22 Like *Collins*, the basic premise of the
23 defendants' argument is that the *Brady* obligation somehow
24 trumps an individual's 4th Amendment rights, but in my view,
25 that's simply not the case. The Court concludes that, because

09:54AM

1 the Government is without the requisite legal authority, it is
2 not in the possession of the data for discovery purposes. The
3 Government's possession of the devices and the data that were
4 obtained by search warrant is necessarily circumscribed by the
5 4th Amendment nor have any of the individuals who own the
6 devices searched pursuant to the warrant consented to a further
7 review of their data.

09:54AM

8 The Court arrives at the same conclusion with
9 respect to the devices that were searched and imaged pursuant
10 to the consent agreements. The two individuals who consented
11 did so under specific limiting conditions. Those conditions
12 circumscribed the Government's legal authority over the data,
13 devices, and accounts and do not authorize the wholesale
14 disclosure as sought in this case.

09:54AM

15 Defendants also argue that the cooperation plea
16 agreements with the cooperating defendants establish the
17 Government's possession of the devices under *Brady* and Rule 16.
18 The defendants point out that the cooperating defendants
19 entered into plea agreements whereby they agreed to produce all
20 documents, records, and other tangible evidence relating to
21 matters about which the United States Attorney's Office may
22 require.

09:55AM

09:55AM

23 In support of their argument, defendants cite
24 three district court cases concluding that the Government's
25 ability to require cooperating defendants to produce evidence

1 at its request may establish the requisite possession and
2 control over such evidence.

The Court declines to adopt the reasoning of those cases under the circumstances of this case. Defendants are asking to examine the entirety of the individual phone and e-mail accounts. These items contain private, personal, and highly sensitive data. Indeed, the entirety of people's lives in this day and age are typically reflected on their phones, their messages, and e-mails. A cooperating defendant does not give up and, frankly, should not have to give up the right to protect information of the most personal and private nature when entering into a cooperation agreement with the Government. This is especially true given that the defendants have failed to show in any meaningful way that the information they seek may be material to their defense.

16 As to materiality, a defendant must make a
17 threshold showing of materiality which requires a presentation
18 of facts that would tend to show that the Government is in
19 possession of information helpful to the defense. Neither a
20 general description of the information sought nor conclusory
21 allegations of materiality suffice.

22 Defendants make a general claim that the
23 requested data on the devices and accounts is material because
24 it may contain information relating to interactions between
25 Esparza and Kim and other key figures that might allow

1 defendants to develop a defense that cooperators were acting on
2 their own behalf rather than on behalf of the alleged RICO
3 enterprise.

4 Defendants provide no specific information
09:56AM 5 regarding the other cooperating defendants and witnesses. They
6 offer only a broad general allegation that, because the
7 Government's case stands or falls on the testimony of numerous
8 individuals engaged in varying levels of cooperation with the
9 Government, they're entitled to examine without limitation the
09:57AM 10 complete devices and accounts of each and every cooperating
11 witness.

12 The Court concludes that this showing is
13 speculative and falls well below that required to demonstrate
14 materiality. Defendants have received voluminous and broad
09:57AM 15 discovery from these devices, yet fail to indicate with any
16 particularity what may be missing.

17 The Court agrees with the Government that what
18 the defendants really seek here is a fishing expedition into
19 each of the witnesses' and cooperating defendants' personal and
09:57AM 20 private information to which they are simply not entitled.

21 The next category, which is the witness and
22 cooperator communications, the Government represents it has
23 made broad disclosures and produced discovery beyond its
24 obligations in this case including reports of witnesses'
09:58AM 25 interviews, notes from these interviews, and text messages and

1 e-mails between witnesses and agents.

2 The Government has also produced certain
3 substantive communications between the Government and counsel
4 for witnesses where appropriate and consistent with its
09:58AM 5 discovery obligations. Despite this discovery, defendants now
6 request that the Government also produce all communications
7 between the Government and any witnesses or cooperators and
8 their counsel including non-privileged notes, scheduling
9 notices, and all records of communications. The Government
09:58AM 10 notes that, because it has already produced reports of witness
11 interviews, the material in dispute consists of communications
12 between the Government and third parties and their counsel.

13 As I indicated, the Court is not entirely clear
14 as to what has already been produced that complies with the
09:58AM 15 defendants' broad discovery request but assumes, based upon the
16 defendants' reply, that, while the Government has produced
17 communications containing the substance of witness statements,
18 it has not produced a full set of the scheduling notices and
19 e-mails.

09:59AM 20 The Government's letter to the public defender --
21 federal public defenders dated April 28th to which the
22 Government cites to show what has been produced provides some
23 clarification surrounding the parties' discussion on the matter
24 but does not refer to definitive categories or give the Court
09:59AM 25 the clarity it needs in order to make any ruling.

09:59AM

1 So for all of the -- the defendant contends that
2 a full set of the requested communications is material in order
3 to attack the character and quality of the investigation
4 including attacking the means by which the Government has
5 handled cooperating witnesses. In their reply, the defendants
6 argue the timing of the contacts between counsel for
7 cooperating defendants and the Government may help establish
8 how witnesses' testimony was shaped and changed in order to
9 align with the Government's theory and obtain greater benefits
10 for themselves.

10:00AM

11 The Government claims that it has produced and
12 will continue to produce Rule 16, *Brady/Giglio*, and *Jencks Act*
13 discovery consistent with its duty to make decisions about what
14 falls within this category.

10:00AM

15 The Court is confident that the Government will
16 continue to comply with all its discovery obligations in this
17 case. Indeed, the Court has requested and the Government has
18 consented to what the Court considers and has referred to as an
19 open file discovery in this case. Based upon the prosecution
20 team handling of this case to date, the Court concludes that
21 the prosecutors fully understand and will continue to comply
22 with their discovery obligations.

10:00AM

23 The Government's understanding and compliance
24 with its obligation is evidenced by the incredibly detailed
25 description defendants were able to make in their motion and

10:01AM

1 reply briefs and in Mr. Snyder's declaration that I have been
2 referring to regarding the alleged changes in Goldman and
3 Businessperson A's testimony which are obviously based on
4 discovery already produced and can and will be used to impeach
5 both witnesses.

10:01AM

6 The Court thus denies the defendants' motion for
7 additional discovery relating to those communications. Should
8 the defendants believe that the Government is not in compliance
9 with its discovery obligations, the defendants are free to
10 raise these issues at an appropriate later point in time,
11 hopefully with a full record so I can make a determination
12 without spending an enormous amount of time going through all
13 of the documents.

10:01AM

14 So for all the foregoing reasons, the Court
15 denies the defendants' motion to compel.

10:02AM

16 All right. We have another issue that I wanted
17 to discuss. Mr. Steingard, this relates to what I discovered
18 this weekend is yet to be ruled on, and that is the pending
19 request for Defendant Shen Zhen New World's second application
20 for issuance of early return of subpoenas duces tecum that was
21 filed March 21st of 2022. It appears as docket No. 44. This
22 was filed after I issued in July of last year a minute order
23 denying the ex parte application for issuance of Rule 17
24 subpoenas. The denial was without prejudice.

10:03AM

25 I also issued a separate minute order that, if

1 defendant was going to file a revised ex parte application and
2 continued to request the gag order, that the parties prepare a
3 joint statement setting forth their respective positions with
4 respect to the gag order. That appears as docket No. 197.

10:03AM 5 And as I indicated, on March 31st you filed the
6 second ex parte application. Thereafter, there were requests
7 which I granted for continuances of the joint statement, but
8 that joint statement was filed on March 29th. That doesn't
9 make any sense with respect to the -- anyway, it was filed.

10:04AM 10 Let me see if I can find it here. It was filed on March 29th.
11 It appears as docket No. 415. It was the joint filing re
12 subpoenas.

13 Mr. Steingard, I will hear from you, but it's --
14 I want to know how you want to proceed because I haven't -- I'm
10:04AM 15 not making a final ruling, but my tentative ruling is that I'm
16 not going to issue a nondisclosure order that the parties or
17 the persons or parties who are subpoenaed are not going to be
18 precluded from discussing the subpoena.

19 I'm not sure that you're aware, but I can tell
10:05AM 20 you my normal practice is that, when a Rule 17 -- a return for
21 a Rule 17 subpoena the documents are produced, they're produced
22 to the Court. And the Court then notifies counsel, and all
23 counsel have an opportunity to review the documents that are
24 produced. That's my normal practice. I don't know what you
10:05AM 25 want me to do with the ex parte application.

10:06AM

1 Quite frankly, I don't see how any of the
2 requested documents -- I know the argument is always that they
3 reveal trial strategy. I can't imagine how any of these
4 documents reveal trial strategy. There's nothing in your
5 showing that would give me any indication in terms of what the
6 trial strategy is save and except for perhaps for paying bribes
7 with someone else's money.

8 MR. STEINGARD: I'm not sure what the Court
9 refers to there, but you have several documents before you.

10:06AM

10 THE COURT: Yes.

10:07AM

11 MR. STEINGARD: One, of course, is the ex parte
12 application -- the ex parte application for a -- for the
13 subpoena duces tecum. And in that document we have included my
14 declaration, and that is where for the most part we laid out --
15 I laid out what I believe would have been the basis for the
16 nondisclosure. And in the joint filing I referenced that
17 without getting any more specific because obviously that was
18 filed in camera. So you would have to circle back, Your Honor,
19 to the ex parte filed in camera --

10:07AM

20 THE COURT: No. I have that.

10:07AM

21 MR. STEINGARD: I understand. I understand. And
22 that -- in response to your question that you don't see any
23 trial strategy issues, I'm simply saying to you that the
24 showing that we made or we attempted to make would be contained
25 in that document. If you find that inadequate, then there is

1 your answer. I can't go into that any further in open court,
2 but I would be prepared, of course, to go in chambers with the
3 Court.

4 THE COURT: I'm not going to go in chambers. If
10:08AM 5 you want to file some supplemental declaration -- basically one
6 of the thrusts, which I don't know is a trial strategy, is
7 making a more complete record.

8 MR. STEINGARD: Okay. I don't disagree with
9 that.

10 THE COURT: Okay.

11 MR. STEINGARD: I don't disagree with that as a
12 partial of what we're trying to do, yes.

13 THE COURT: That's somehow trial strategy?

14 MR. STEINGARD: Well, let's talk in the
10:08AM 15 hypothetical if that's all right.

16 THE COURT: Sure.

17 MR. STEINGARD: In the hypothetical, the
18 Government calls an expert witness who says, I reviewed these
19 ten documents. And in the hypothetical the defense calls an
10:08AM 20 expert witness that says, I reviewed those ten documents too
21 but they -- they didn't look at these ten documents which shed
22 light on the ten that the -- that the Government did look at.
23 We view that as a trial strategy, vis-à-vis, or in regards to
24 where we have got a prepared witness -- a prepared expert
10:09AM 25 witness where the Government -- which would negate, refute,

1 rebut the Government's witness in that hypothetical. I guess I
2 would call that a trial strategy.

3 THE COURT: Well, you can characterize anything
4 as a trial strategy.

10:09AM 5 MR. STEINGARD: Well, I guess. But why wouldn't
6 it be? Why wouldn't it be that we're trying to say we don't
7 want to be the party to prepare the Government's witnesses?

8 THE COURT: So you're basically saying use the
9 Rule 17 subpoena in order to obtain documents that you believe
10 are necessary for impeachment.

11 MR. STEINGARD: I don't think that's necessarily
12 impeachment. It could be impeachment. Part of it would be
13 impeachment. If we showed the expert witness the extra ten
14 documents that the Government hadn't looked at and the witness
10:10AM 15 said, gee, I've never seen these before, therefore, I can't
16 comment, that would be impeaching.

17 THE COURT: Well, if you want to file something
18 else, I will take a look at it. But those are my tentative
19 views.

10:10AM 20 MR. STEINGARD: That's fine. And could I just
21 address one other point, Your Honor?

22 THE COURT: Sure.

23 MR. STEINGARD: You mentioned that your normal
24 practice is to, when the materials are received by the Court,
10:10AM 25 to call all counsel, it sounds like, and invite them to come

10:10AM

1 and inspect the documents. I would ask that the Court
2 consider, because this is a defense subpoena, simply providing
3 those documents to the defense, allowing the defense to make a
4 determination whether they're going to be used at trial, and if
5 so, of course, the defense has their own obligations under
6 Rule 16.

7 THE COURT: Right. Because you're ultimately
8 going to have to give the documents to the Government in any
9 event.

10:10AM

10 MR. STEINGARD: Only if they're going to be used.

10:11AM

11 THE COURT: Right. In your hypothetical that
12 we're talking about, your expert is going to be testifying as
13 to the missing documents because those ten that the expert
14 didn't look at, those ten documents are going to have to be
15 turned over to the defense as part of your obligation.

10:11AM

16 MR. STEINGARD: What I'm saying is, in the
17 production to the Court in this hypothetical, 20 documents,
18 50 documents were produced and the defense selected 10 that
19 they wanted to use, those, of course, would have to be produced
20 to the Government but not the other 40.

10:11AM

21 THE COURT: Right. That's why all these Rule 17
22 subpoenas and all this alleged trial strategy, you know,
23 especially in this case where it's been my effort to make sure
24 that there are no surprises that occur at the time of trial,
25 obviously it's more slanted toward making sure that the defense

1 doesn't have any surprises but also that there are no surprises
2 for the Government although that's a different issue.

10:12AM

3 In any event, I still don't see it. More
4 importantly, it seems like many of these documents should be
5 available without the necessity of a subpoena.

10:12AM

6 MR. STEINGARD: I wish that to be true,
7 Your Honor. I believe the documents we're talking about are
8 not available to the defense with just a phone call. I wish it
9 was -- I wish it was different, but I can tell you we have made
10 phone calls. We haven't --

11 THE COURT: Maybe it takes a visit.

12 MR. STEINGARD: Well, that would be okay. That
13 would be okay with me.

10:12AM

14 THE COURT: In any event, then you can have --
15 you know, you can have all of the boxes of documents, and if
16 they're voluntarily produced to you, you can do whatever you
17 want with them.

10:12AM

18 MR. STEINGARD: Absolutely right. If that was
19 the case, we wouldn't have submitted any kind of an application
20 to the Court. May I just suggest, Your Honor, that you sit on
21 this for two weeks?

22 THE COURT: Sure.

23 MR. STEINGARD: And give me an effort with
24 co-counsel --

10:13AM

25 THE COURT: We're talking about an October trial

1 date.

2 MR. STEINGARD: Correct.

10:13AM 3 THE COURT: I know these documents are
4 potentially voluminous, but given -- I think, once they're
5 produced, it should be a fairly easy task to accomplish what I
6 understand you're trying to accomplish.

7 MR. STEINGARD: I agree.

8 THE COURT: So you can -- two weeks, three weeks
9 is fine with me.

10:13AM 10 MR. STEINGARD: Okay. You will have it within
11 two weeks. Again, that will be filed in camera. You already
12 have the joint filing with the Government which lays out our
13 respective positions. You will have a full plate then.

14 THE COURT: Right. And then with the -- of
15 course, again, you know, all this Rule 17 stuff is -- you know
16 exactly what happens, and obviously the request for your gag
17 order or the nondisclosure order is, as soon as a subpoena is
18 served, the first call is to the Government saying, guess what,
19 I got this subpoena. What do I do with it? So that's why all
10:14AM 20 of this to me is just -- in any event.

21 MR. STEINGARD: I agree the system isn't perfect,
22 Your Honor, but it's the one we're playing with. So we have to
23 go -- I agree with you that may well happen. In fact, it
24 likely will happen. But at least we can take steps to try to
10:14AM 25 prevent it.

10:14AM

1 THE COURT: I understand. Maybe somebody should
2 consider changing Rule 17 to make it work like the defense
3 lawyers want it to work. I mean, I had a case where I had to
4 put a stop to the practice -- I didn't understand it -- but the
5 Federal Public Defender's Office was having Rule 17 subpoenaed
6 documents delivered to their office instead of delivered to the
7 Court which I found to be -- not in this case and not any of
8 these lawyers, but I found that to be highly unusual and put a
9 stop to that practice quickly.

10:15AM

10 MR. STEINGARD: All right.

11 THE COURT: All right. Anything else?

12 MS. DRAGALIN: Your Honor, we do have the

13 stipulation to continue the RICO trial for --

14 THE COURT: Right. I was going to sign that

10:15AM

15 today, but I see Mr. Braun is rising and he had some problem
16 with --

17 MR. BRAUN: I just thought the last thing we
18 needed is another motion or hearing in this case. There has
19 been some issue raised about my competence and communication
20 with my client in terms of the offers. So I think the simplest
21 way is for me to just have my client prepare a declaration as
22 to what his knowledge is and file that with the Court. The
23 Court can then decide whether or not any further inquiry is
24 necessary.

10:15AM

25 He's fully prepared to testify, and he's brought

1 all the documents, but I think it would be better just to file
2 a declaration.

3 THE COURT: Well, that issue has never been
4 raised with me.

10:16AM 5 MR. BRAUN: It's been raised by the Government
6 with me, and I think I will just -- if it's okay with the
7 Court, we will file a declaration by my client saying here's
8 what he knows about the case, here's what the offers are, and
9 he's fully aware of them, and that should end that issue.

10:16AM 10 THE COURT: But you're going to file that in
11 camera.

12 MR. BRAUN: We can do it in public. There's no
13 issue.

14 THE COURT: All right. Whatever you want, I'm
15 unaware of the issue. The only issue I was aware of is at one
16 stage of these proceedings the Government had attached several
17 e-mails that were exchanged between you and the Government and
18 the Government rightly was taking offense to some of the
19 statements that were made in those e-mails.

10:16AM 20 MR. BRAUN: I think they left out some of the
21 better e-mails. We will put together a declaration,
22 Your Honor.

23 THE COURT: All right. Well, I am going to sign
24 that stipulation for a continuance of the trial to February.

10:17AM 25 All right. Anything else?

10:17AM

1 MR. JENKINS: Just to clarify, if Mr. Braun's
2 position now is that Mr. Chan is waiving to that date, he just
3 noted it was agreeable, so originally he had objected between
4 January to February, he's agreeing now, just for the record,
5 that would be helpful.

6 MR. BRAUN: I hate to be technical. I don't
7 think you can waive. We can stipulate there's a good cause. I
8 don't think you have a right to waive a Speedy Trial Act. We
9 will stipulate to the good cause.

10:17AM

10 THE COURT: Is that sufficient, Mr. Jenkins?

11 MR. JENKINS: That is. Thank you, Your Honor.

12 THE COURT: Do you want to redo the stipulation?

13 MR. JENKINS: I definitely do not, Your Honor.

14 But --

10:17AM

15 THE COURT: The order?

16 MR. JENKINS: We can amend the order, Your Honor.

17 THE COURT: Why don't you just submit an amended
18 order.

10:17AM

19 All right. How many motions in limine are we
20 anticipating in the Lee case?

21 MR. NEUMAN: I think there's three.

22 THE COURT: Three?

23 MR. NEUMAN: Yes. And two of them are
24 relatively -- I will see what the Government's opposition is.
25 Two of them are relatively short. One is longer.

1 THE COURT: All right. In terms of the time
2 estimate for trial, where are we at?

3 MS. DRAGALIN: Your Honor, we estimate that the
4 trial -- the Government's case in chief will run approximately
10:18AM 5 five court days. So we anticipate we would spill it over into
6 the following week of after June 14th. But we do think we
7 should be finished by the end of that week.

8 THE COURT: Do you agree, Mr. Neuman? The
9 reason, I have a custody case that I have to -- I have to try.
10 I want to make sure that this trial doesn't interfere with that
11 custody case. How long do you anticipate the defense case to
12 take?

13 MR. NEUMAN: No more than a day or two if there
14 is a defense case. I haven't had a chance to talk about this
10:18AM 15 with the Government. There's I think, just from memory, 23 or
16 so witnesses on their list. I think some of them are
17 cumulative and don't have relevant evidence. We will discuss
18 that with the Government and, as necessary, raise it with the
19 Court before they testify.

10:19AM 20 THE COURT: Okay.

21 MR. NEUMAN: Given the Court's mention of
22 scheduling, does the -- I know the Court had concerns about in
23 custody trials. Is the June 14th date still looking like it's
24 going to work?

10:19AM 25 THE COURT: The June 14th date I -- I have

1 guarded the June 14th date so we can get this case tried. I
2 had to set the custody case that I'm referring to to commence
3 after the June 14th date. It's going to be -- I think we will
4 have sufficient time.

10:20AM 5 Again, I'm sure you all realize that we're
6 continuing to operate under this system which I hope we can
7 abolish. But I have to make a request for a jury panel for a
8 particular day, and there's no assurance that I will be able to
9 have a jury panel on June 14th. But I'm going to make some
10 efforts this week to make sure that I can lock in that date
11 because the timing is going to be such that we're going to
12 be -- I want to make sure that we get this case tried and allow
13 my custody case to go because we're all --

14 MR. NEUMAN: I take it this custody case is set
15 for June 28th. Is that --

16 THE COURT: Yes.

17 MR. NEUMAN: So if the Government is talking five
18 days, that goes to the 21st or so. I think that's probably
19 sufficient to get the case at least to the jury by the end of
20 the week.

21 THE COURT: Right. That's my -- that was my game
22 plan when I set the custody case for the 28th.

23 MR. NEUMAN: Is the -- maybe we're too far in
24 advance. Is the Court anticipating the sort of spread out jury
25 that I see here?

10:21AM

1 THE COURT: This is the way we have been
2 conducting. We pick a jury in Courtroom 1 and then -- because
3 we can have a sufficiently -- a larger panel than doing it in
4 here and I don't have to use the video. And then after we pick
5 the jury and I give them preliminary instructions, then we come
6 back up here, and then we spread out consistent with the
7 numbers that you see which gives us, along with all the
8 plexiglass, some social distancing.

10:22AM

9 That's an issue I can raise with counsel now. I
10 have been asking for fully vaccinated juries and have done so
11 in the last four or five cases that I have tried. Does anybody
12 have any objection to that?

13 MS. ALÉ: Your Honor, are you asking for Huizar?

10:22AM

14 THE COURT: No. I'm not asking you. I'm asking
15 Mr. Neuman who is coming to trial on the 14th.

16 MR. NEUMAN: Just off the top, no, but I would
17 like to have a moment to think if there is any reason.

10:22AM

18 THE COURT: Sure. If you do have an objection,
19 just let us know. It -- quite frankly, I have noticed that it
20 really has not had any impact on the composition of the panel.
21 Although we all know that vaccination plus booster may not
22 be -- may not be fully protecting everybody, I have noticed,
23 when I speak to the jurors afterwards -- and Shannon, when she
24 speaks to them during the day -- they're much, much more
25 comfortable knowing that the panel -- their fellow jurors are

1 fully vaccinated. Even if we still separate them like this,
2 they still go on breaks together and it's just -- it makes the
3 jury panel and it makes the Court more comfortable in terms of
4 whatever may be happening on June 14th.

10:23AM 5 MR. NEUMAN: That's fine. When does the Court
6 need an answer? I can get back to you. I just need time.

7 THE COURT: The next couple days.

8 MR. NEUMAN: No problem. Thank you, Your Honor.
9 We will be a little bit crowded because I anticipate having a
10 translator between me and my client, an attorney from my firm,
11 but she will be serving that role.

12 THE COURT: We have the benefit of the back row.
13 The interpreter typically works through headphones.

14 MR. NEUMAN: Right. I'm not talking about my
15 client understanding what's happening in court. I'm talking
16 about he and I being able to talk during the proceedings. My
17 co-counsel Mr. Seilie will be -- it may be a little more
18 crowded than it otherwise might be.

19 THE COURT: Okay. All right. Does the
20 Government have any objection?

21 MR. JENKINS: Provided that the defense agrees,
22 the Government has no objection.

23 THE COURT: All right. Well, I'm obviously not
24 going to do it if there's an objection. But I just think
25 it's -- for whatever is going on with the -- who knows what

1 variant it may be by June 14th.

2 MR. NEUMAN: I take it the Court is not requiring
3 participants to be masked during the proceedings.

4 THE COURT: I am. The jury -- the last trials
10:25AM 5 that we have had, the jury has -- the jurors have all worn
6 masks. I have counsel wear masks unless they're speaking. The
7 witnesses do have not to -- they have to wear masks -- they
8 don't have to wear masks while testifying. But you know, we
9 still have the mask rule in effect. I see everybody is
10 violating the mask rule this morning.

11 MR. NEUMAN: Followed Government counsel's leads.

12 THE COURT: So I will issue sanctions against
13 Mr. Jenkins personally for violating the rules.

14 MR. JENKINS: I will endeavor to do better next
10:25AM 15 time, Your Honor.

16 MR. NEUMAN: Thank you, Your Honor.

17 THE COURT: Thank you very much. We will be in
18 recess.

19 (Proceedings concluded at 10:25 a.m.)

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MIRANDA ALGORRI, CSR NO. 12743, CRR
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